

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MICHAEL ANDRE CAMPBELL,)	
)	
Petitioner,)	
vs.)	Case Number CIV-07-796-C
)	
JOHN WHETSEL, Sheriff, et al.,)	
)	
Respondent.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

This action for habeas corpus relief brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Doyle W. Argo, consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Argo entered a Report and Recommendation (“R&R”) on October 24, 2007, recommending the Petition be dismissed as it contained exhausted and unexhausted claims. Petitioner timely filed a Response. Therein, Petitioner does not specifically object to any portion of the R&R but makes requests of the Court that were not included in the Petition. Petitioner requests the Court to provide him with a copy of his Petition, direct the state court to provide him with transcripts of his trial, and order the staff at the facility where he is detained to permit him access to the law library.

The facts and relevant law are set out in full in the accurate and well-reasoned opinion of the Magistrate Judge and there is no need to repeat them here. Judge Argo correctly determined that Petitioner has failed to exhaust available state court remedies prior to filing his request for habeas relief. Because Petitioner has presented a mixed

petition, it must be dismissed or Petitioner must elect to drop the unexhausted claims and proceed only on those claims properly exhausted. Pliler v. Ford, 542 U.S. 225, 227 (2004). As Judge Argo properly found, Petitioner's request that he be permitted to dismiss the unexhausted claims and maintain his action here while exhausting those claims in state court is not the best option for Petitioner. Because of the nature of the claims he raises, it is quite possible, if not likely, that a later petition seeking to raise the claims unexhausted at this time would have to be construed as a second or successive petition. Thus, the proper course is dismissal.

As for the additional requests made by Petitioner, the Court will direct the Court Clerk to provide Petitioner with a copy of the Petition filed in this matter once Petitioner has tendered the appropriate copying charges. As for Petitioner's request for orders to the state court and/or the facility in which he is held, the Court declines to enter the requested order. Because Petitioner's case here is dismissed, he must pursue those requests in state court. Because Petitioner has other alternatives to secure any right to law library access, his request for a Writ of Mandamus will be denied.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation (Dkt. No. 12) of the Magistrate Judge, and for the reasons announced therein, dismisses this petition for habeas corpus relief. The Clerk shall notify Petitioner of the cost for obtaining a copy of his Petition and upon receipt of payment provide Petitioner a copy.

Petitioner's request for a Writ of Mandamus (Dkt. No. 14) is DENIED. A judgment will enter accordingly.

IT IS SO ORDERED this 29th day of November, 2007.



ROBIN J. CAUTHRON
United States District Judge